IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.236 OF 2005..

Shri Ramchandra Pandurang Raut
since deceased by LRs
Shri Satish Ramchandra Raut
and ors. : Appellants.

versus

Shri Harishchandra P. Raut
since deceased by LRs
Smt.Usha Harishchanra Raut
and ors. : Respondents.

Mr.H.S.Murthy i/by Mr.P.A.Sawant for the appellants.
Smt.Seema Sarnaik for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 08th September 2005.

ORAL ORDER

1. Heard advocates for the appellants and respondents. Appellant was the original

plaintiff. He filed a suit for partition of agricultural land only. According to him, the partition was unequal. He got some area between 6 to 7 acres whereas the defendant has got 16 to 17 acres. It was a case of the plaintiff that the so called memorandum of partition prepared before the panchas was not signed by the defendant.

2. As against this, it was the case of the defendant that this partition was accepted by the plaintiff, it was acted upon, the plaintiff made two statements before the revenue authority accepting the fact of partition. Further in the cross examination, the plaintiff admitted that he was not seeking partition of three houses and other movable property. The suit of the plaintiff was decreed by the trial Court, but the appellate Court allowed the appeal and dismissed the suit. Hence this appeal.

3. The counsel for the respondent drew my attention to the cross examination of the plaintiff and also to the fact that if the property was joint property and the plaintiff has accepted his share giving affirmation or

confirmation about the same before the revenue authority, then he had no right to challenge the said partition which was acted upon.

4. Mr.Murthy, appearing for the appellant, strenuously urged that if the partition was effected by a registered document, whether the partition of the property by unregistered memorandum of partition or panchanama was permissible. In fact it is a document signed by him, it was acted upon as between two parties who are the brothers. If they decided to partition the property in the aforesaid manner and act upon it, and the plaintiff makes similar statement before the revenue authority, then filing a suit after 7/8 years after the said memorandum was a strong circumstance to weigh with the appellate court in allowing the appeal and dismissing the suit. No substantial question of law is involved. No merit in this appeal. Hence the appeal is dismissed.

[D.G.DESHPANDE,J]